

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



**CORRECTED
FISCAL NOTE**

HB 1111 - SB 1222

March 5, 2013

SUMMARY OF BILL: Establishes a process for pole attachment fee negotiations between utilities and attaching parties and a dispute resolution mechanism for unsuccessful negotiations between parties. Authorizes either party to petition the governing board of the utility, who will then forward the petition to an Administrative Law Judge (ALJ) of the Department of State (SOS), when negotiations between parties have been unsuccessful. Requires the ALJ to determine a maximum pole attachment rate equal to the shared costs incurred by all parties, and then furnish copies of the orders issued to the governing board of the utility. Authorizes the governing board to either accept the determined rate or establish a rate that is less than the rate issued in the order. Requires all costs associated with the ALJ to be shared equally between both parties. Establishes an annually-assessed penalty fee not to exceed \$500 per violation per pole for any pole attaching party who neglects to obtain the written consent of a utility before attaching to a pole owned by such utility, or for failing to attach to poles in accordance with American National Standard Electrical Safety Code, or for failing to report a safety violation to the utility. Creates a twelve-member working group, to be appointed by the Speaker of the House of Representatives and the Speaker of the Senate, comprised equally of persons representing utilities and attaching parties, who shall file an annual report with the legislature and work together to develop operational practices and any proposed legislative changes.

ESTIMATED FISCAL IMPACT:

On February 25, 2013, a fiscal note was issued estimating a fiscal impact as follows:

Increase State Revenue - \$180,000/One-Time

Increase Local Revenue - \$4,305,900/Recurring

*Increase Local Expenditures - \$90,000/One-Time**

Decrease Local Expenditures - \$8,724,200/Recurring

Due to an incorrect assumption, this fiscal impact was in error. Based upon additional information provided by Tennessee Municipal Electric Power Association and the Tennessee Electric Cooperative Association, the estimated fiscal impact is:

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(CORRECTED)

Increase State Revenue - \$180,000/One-Time

Increase Local Revenue - \$3,179,300/Recurring

Increase Local Expenditures - \$90,000/One-Time*

Decrease Local Expenditures - \$5,193,800/Recurring

Assumptions:

- According to information provided by the Tennessee Municipal Electric Power Association (TMEPA) and the Tennessee Electric Cooperative Association (TECA), AT&T, their subsidiaries, and virtually all telephone companies; it is estimated that 5 percent of telephone attachments will not be exempted.
- Members of the working group will not receive any state reimbursement for attending meetings.
- According to the SOS, this bill will generate approximately 120 cases for the Administrative Procedures Division (APD) of the Department.
- The number of cases heard will be greatest the first year, and will diminish thereafter. As a result, the total number of cases is estimated to be 120 statewide.
- The APD charges \$100 per judge-hour to conduct contested case hearings.
- According to the DOS, each case hearing will require two days of judges' time, including travel, hearing time, and order preparation, totaling 15 hours per case. As a result, the one-time increase in state revenue is estimated to be \$180,000 (\$100 per judge-hour x 15 judge hours x 120 cases).
- Given that all costs associated with hearings are to be shared equally among parties, the one-time increase in local government expenditures is estimated to be \$90,000; the remaining \$90,000 of hearing case costs will be incurred by the private pole attaching entity.
- Based on information provided from a survey conducted by TMEPA in 2012 with 83% of their membership reporting, there are 1,573,340 TMEPA poles statewide.
- The average annual fee charged by TMEPA for cable TV (CATV) is \$18.55 per pole, with 784,202 CATV attachments.
- The average annual fee charged by TMEPA for a telephone attachment is \$25.94 per pole, with 762,270 telephone attachments.
- If parties cannot reach an agreement on price and an ALJ is appointed to mediate, the ALJ is required to calculate the pole attachment rate that equals the shared cost rate for all attaching parties and this calculation will be the maximum allowable attachment rate charged.
- As defined in Section 2(b)(5) of the bill, the shared cost rate is calculated by establishing the total annual cost of pole ownership and allocating that total cost among pole users based on the average number of users.
- According to TMEPA, the average pole cost is \$100.00 and the average number of attaching parties is 3 per pole; the utility, CATV, and telephone.
- Using these figures, the average cost per attaching party is \$33.33 (\$100.00 cost per pole / 3 attaching parties).

- While it is unknown how many parties will require action by the ALJ, or how many governing boards of utilities will adopt the maximum calculation given by the ALJ, it is reasonably estimated that at least 25 percent of current cable-TV attachment rates and five percent of current telephone attachment rates will increase to the maximum rate of \$33.33.
- For cable-TV attachments, a recurring increase in local government revenue estimated to be \$2,897,626 [(784,202 CATV attachments x 25%) x (\$33.33 increased rate - \$18.55 current rate)].
- For telephone attachments, a recurring increase in local government revenue estimated to be \$281,659 [(762,270 telephone attachments x 5%) x (\$33.33 increased rate - \$25.94 current rate)].
- The total recurring increase in local government revenue is estimated to be \$3,179,285 (\$2,897,626 + \$281,659).
- Based on figures provided by TMEPA, municipal electric utilities are currently responsible for \$55.51 per pole [\$100.00 per pole cost – (\$25.94 telephone attachment rate + \$18.55 CATV attachment rate)]. If the shared cost rate is used, the cost per pole to the municipal electric utility will be \$33.33 for utilities. Therefore, a recurring decrease in local government expenditures is estimated to be \$5,193,758 {[(784,202 CATV attachments x 25% with rate increases) + (762,270 telephone attachments x 5% with rate increases)] x (\$55.51 - \$33.33)}.

*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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